THE UNITED STATES BANKRUPTCY LAW OF 1898.

The special objects kept in view by the framers of this law seem to have been:

1. To reduce the fees and expenses to a minimum, and to give to the creditors the control of the settlement of estates, and thereby to provide that the assets of the bankrupt shall go to his creditors rather than to officers and lawyers.

2. To provide that all bankrupts and impecunious persons, whether they have assets or not, shall obtain a discharge from their debts at a nominal expense, and thereby make it unnecessary for any man in the United States to be longer hampered by a load of debt which he is unable to pay.

3. To enforce the acceptance of compositions, and thereby put it out of the power of a few creditors to prevent the acceptance of terms of settlement offered by an insolvent, when manifestly better for the whole mass of creditors than a legal settlement of his affairs.

The law requires a deposit of $25 upon filing a petition in voluntary bankruptcy, $10 of which goes to the clerk of court, $10 to the referee, and $5 to the trustee. There is a further provision that the bankrupt may be excused from paying the $25 upon making affidavit that he is not able to pay it. A host of such petitions have been filed in some of the States, and especially in the Southern States. Most of the District Courts in this part of the United States have established a rule that the bankrupt making the affidavit that he is unable to pay the fees, shall be subjected to an examination as to his ability to pay them.

Under this rule, it has been held In re Collier, 1 N. B. R. 182, that where a petitioner was earning $30 a month, this was conclusive evidence of his ability to obtain his $25 for the filing fees, notwithstanding that he had a family to support out of his earnings. Other similiar rulings have been made, and there are likely to be in the future very few pauper petitions.

The other fees allowed, in addition to actual expenses, are:

To the referee, one per cent upon dividends paid.

To the trustee, three per cent upon the first $5,000, two per cent upon the second $5,000, and one per cent upon the remainder of dividends paid.

To the appraisers, attorneys, receivers, and marshals, a reasonable sum to be fixed by the court.

For taking and transcribing testimony and for copies, ten cents per hundred words.

Appraisers in this district are ordinarily allowed five dollars per day.

Marshals and sheriff's keepers in charge of property are allowed $2.50 for twenty-four hours actual time spent in custody of property.

Attorneys for bankrupt in voluntary cases are generally allowed from twenty-five to fifty dollars, and attorneys for creditors in involuntary cases, from fifty to one hundred dollars. These amounts vary in special cases, and where the estates are large (as is seldom the case) are considerably greater.

Most of the District Courts have also established rules prescribing allowances for referees for office and clerical expenses. These rules ordinarily provide that the referees may charge $5 for sending out notices of first meeting, correspondence and other services before first meeting, together with ten cents additional for each creditor above twenty. They also allow $2.50 for the office expenses of the first meeting. The advertising for a meeting costs about $2.50. The allowances to referees for expense on discharges are usually the same as those for the first meeting, and these have to be paid by the bankrupt before obtaining his discharge, whether he has made the affidavit of inability to obtain money for the filing fee or not. In cases where there are no assets no trustee is appointed, so that $5 of the filing fee comes back to the bankrupt.

The duties of the referee, aside from sending notices, which is done by his clerks and paid for by the bankrupt or out of the estate, are numerous, or rather innumerable.

He must advise attorneys as to making their petitions and schedules, for it is less trouble to do this than to get them amended afterward. He must examine all petitions and schedules, and where they are defective it is easier for him to draw the amendments himself than to show someone else how to do it. The statute and rules allow the whole responsibility of the care and conduct of the settlement of the estate to be placed upon him, and the judges have universally availed themselves of the opportunity.

He must perform all the duties of Commissioners in State Insolvent Courts, including receiving and caring for claims, passing upon them, and hearing and deciding contests. He must draw findings of fact after hearing the case in all contests

upon petition for discharge and report them to the judge, with his recommendation, and these reports are expected to contain opinions on any matters of law involved. He must countersign every check by the trustee, which includes examining and approving the payment made by it. He must preside at all meetings and decide all questions raised. He must keep creditors advised of the condition of estates and answer all inquiries, whether made by correspondence or otherwise, and he must daily, hourly and continually be ready to answer any conceivable question of law or fact as to the scope of the bankrupt act, or the estates in his charge, made by attorneys, creditors, trustees, appraisers, bankrupts or the public. He may not be legally obliged to do all this, but he will be considered discourteous if he does not, and will find it on the whole less vexatious to do it than to refuse.

The commissions of the referee and trustee are computed not only upon the dividends, but upon the amount of both fees and dividends; thus if, after payment of all expenses, there remains $1,000, the referee gets a commission of $10, and the trustee of $30, and the $960 is divided among the creditors.

By this mode of compensation, it is made for the interest of both referee and trustee to keep down the expenses to the smallest figure possible, as the smaller the expenses, the greater the dividend and the larger the fee.

In actual practice, the amount of assets in most bankruptcy cases is so small that any small differences in expense makes little difference in the commissions, and the incentive to endeavor to reduce outlay is scarcely perceptible.

Thus far, 105 cases have been brought before me, of which 62 have been finished and 43 are still pending. Of the 105 cases, 51 have had no assets whatever; of the 62 cases finished, only 21 had assets; in only one of them was the whole estate consumed in expenses, the amount of the estate being $42.50; of the remainder, only one of them produced dividends exceeding $1,000, the total amount of actual net assets above mortgages in the others ranging from $96.91 to $1,216.60. In most of the estates, the nominal amount of assets was much larger, as there was much property subject to mortgage; but, in such cases, the actual amount realized by the trustee from the assets subject to mortgages was very small.

Generally speaking, the expense of settling an estate, exclusive of rent of store where goods are situated, has been in the neighborhood of $75 to $100, including expenses of trustee and referee with incidental expenses. This does not include the

four per cent. commissions. In a few cases, expenses of litigation, or expenses of storage of goods until disposed of, has carried the amount above this figure. The small amounts allowed for the fees of referees and trustees have undoubtedly had their effect in allowances for other expenses; and attorneys' fees and appraisers' fees, usually a large part of the expense of settling estates, and other expenses, have been kept to a minimum by referees and judges of District Courts.

The principle object of the law appears to be to make discharges easy, inexpensive and certain. About one-half of the cases are of bankrupts who have no assets whatever subject to execution. Most of these have heretofore made assignments in the State courts.

The total expenses, exclusive of attorney fee, for obtaining a discharge in Connecticut, and probably in most of the districts, is about $40.

The charge of attorneys varies greatly; but, generally speaking, a man who can raise $75 to $100 can get a discharge from his debts and begin the world anew.

No assent of creditors and no payment of any dividend is required for a discharge.

Preferences formerly made are not obstacles to a discharge; for instance, in one case before me, a bankrupt was doing business in New York, and suddenly, without any apparent reason, he made a chattel mortgage to his mother of all his goods, who forthwith advertised them and sold them at auction for a small part of their value to his brother. The debtor then collected his outstanding accounts, paid his family and confidential clerks in full, and made an offer to his creditors of fifteen per cent. Some accepted it and some did not. The case was manifestly a very outrageous one, and the law permitting his discharge seemed in that case very unjust.

The statute, however, provides: "The judge shall discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fradulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed or failed to keep books of account or records from which his true financial condition might be ascertained."

The only offenses punishable under the Act, which can be committed by a bankrupt, are: "concealing property from his trustee or making a false oath in the proceeding." The fact that a bankrupt had given away his property years before is no ground for refusing a discharge under the statute, and the

making of false entries in order to furnish ground for refusing a discharge, must have been done since the passage of the Act, and, as has been held, with special reference not merely to insolvency, but to taking advantage of the Bankruptcy Act.

Neither the referee or the judge, in the case referred to, could find any warrant in the Act for refusing the discharge.

It seems also to be the law that a man finding himself to be insolvent may turn his property into cash, take a trip to Europe, and enjoy himself as much as he pleases until he has spent his last dollar, then return home, and within sixty days be freed from all his indebtedness.

While this identical case has not come to hand, so far as I am informed, any referee can cite plenty of instances of that general character.

A favorite mode of accounting for the absence of assets, which it is proved the bankrupt had shortly before his adjudication, is to testify that the money has been spent in gambling; and so frequently has this been done that the Executive Committee of the National Association of Referees in Bankuptcy have recommended an amendment to the law forbidding a discharge where the disappearance of assets thus accounted for has materially contributed to the bankruptcy.

In a case now pending before the judge of this district, the referee has declined to consider the uncorroborated testimony of the bankrupt that his funds have thus been dissipated as sufficient to overcome the presumption that they are still in his hands, arising from proof that he had them a few month before the filing of the petition, and has recommended the refusal of the discharge on the ground that under this state of proof it should be found that the bankrupt is concealing assets.

The appeal of the bankrupt from the decision of the referee has not yet been decided, and the final outcome will undoubtedly awaken considerable interest among the referees and the legal profession as well as with those intending bankruptcy.

Another additional reason recommended by the referees for refusing a discharge is: the obtaining credit by a false statement in writing, whether made for the purpose of obtaining credit from the person to whom it is made, or for the purpose of being communicated to the trade.

If this recommendation is adopted, it will tend to make business men more cautious as to representations to commercial agencies. In several cases before me the creditors have proved representations to commercial agencies widely varying from the facts, as to assets and liabilities, appearing in the schedules

of the bankrupt, the return of the appraisers, and the reports of the trustees.

It seems reasonable that one who has made written false statements to commercial agencies for the purpose of enabling him to obtain credit should not be discharged from the debts which he has thus been enabled to contract.

In the case of an oral statement, there is always more or less doubt as to the representation made, and it would cause much conflict of testimony and consume much time of referees and courts, with no certainty of a correct result, if such statements were made grounds for denying the discharge.

Another very proper amendment suggested by the referees is the making a fraudulent preference a reason for refusing a discharge, unless such preference has been surrendered within ten days after demand by receiver or trustee, or making a fraudulent transfer to any person.

The matter of having failed to keep books of account has been practically of no avail in preventing a discharge, because it is incumbent upon the objector to prove that such failure was made with the fraudulent intent of concealing the bankrupt's financial condition and in contemplation of bankruptcy, which has been held to mean that the bankrupt, at the time of failing to keep books of account, intended a voluntary assignment in United States Bankruptcy.

It is proposed to amend the Act by erasing the element of fraudulent intent, and providing that the destruction, concealment, or failure to keep, books of account, since the passage of the Act, from which the bankrupt's financial condition might be ascertained, and with intent to conceal such condition, should be ground for refusing a discharge.

Obligations not affected by a discharge are.

1. Taxes.

2. "Judgments in actions for fraud, or obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another."

3. Debts not properly scheduled when the creditor is ignorant of the bankruptcy.

4. Debts contracted by fraud, embezzlement, misappropriation of funds, or defalcation by one acting as an officer or in a fiduciary capacity.

The question has been raised whether liabilities for fraud, false pretenses, or wilful injuries, where judgments have not been obtained before the filing of the petition, are released by a discharge in bankruptcy.

It seems to be the general opinion that this is not the case, and that the language used is intended to exclude the operation of a discharge where the liability for fraud, etc., had been merged in the judgment before the filing of the petition.

To made this matter clear, however, it is proposed to have the Act amended so that no liabilities for frauds, etc., can be affected by a discharge in bankruptcy.

When the proposed amendments are adopted, the provisions for a discharge will not be too liberal, and the Act will be undoubtedly be beneficial in its effects. At present, a discharge from debts is certainly made easy.

The third object of the law, the enforcing of the acceptance of compositions in proper cases, is certainly a commendable one.

In almost all cases of an insolvent attempting to compromise with his creditors, there are found a few creditors who will wait until the last and refuse to sign the compromise, trusting thereby to obtain the whole or a larger share of their debt, although a settlement in the courts would certainly produce a smaller dividend for the creditors generally.

The bankrupt act provides for enforcing a composition whenever a majority in number of the creditors, having also a majority in amount of claims, accept it in writing, and the court is satisfied that it is for the best interests of the creditors, that there would be no bar to the discharge of the bankrupt if a discharge were applied for, that the offer and its acceptance are in good faith, and that the assignment of creditors has not been procured by any improper means.

The requirement of a majority in number prevents the approval by a preponderance of family creditors or special friends.

The requirement of an approval by the judge gives full opportunity for presenting any objections peculiar to special cases.

One frequent source of injustice in the application of the bankruptcy law is the provision that taxes shall in all cases be paid by the trustee.

Under this section it has been repeatedly been ruled that in estates where the bankrupt has a homestead exemption, taxes on the homestead shall be paid by the trustee out of the general assets. Usually the assets consist of goods in stock on account of which the claims of the general creditors were contracted, and to use the proceeds of these goods to pay taxes on the bankrupt's exempt real estate, seems to be as clear a case of judicial robbery as can well be imagined.

The referees have proposed an amendment to remove this evil. In this district, however, the principle is now established, upon the ground of general equity and of the provisions in the statute against paying secured creditors out of the general fund, that where the taxes due from the bankrupt are secured by liens upon property which does not benefit the estate, they need not be paid by the assets of the estate.

In one case pending before me, the bankrupt had, some years before, and while solvent, given a piece of real estate, subject to tax liens, to his wife. The tax collector presented the tax for payment against the estate. The referee held that the collector should rely upon his security, and disallowed the claim, and directed the trustee not to pay it. All the parties acquiesced.

Another case has recently arisen in which real estate mortgaged for more than its value was subject to tax liens for many years, so that the taxes, if paid, would absorb substantially all the available assets.

The referee held that the provisions of the statute as to secured claims, and the general rules of equity as to the marshalling of assets, should prevail in respect to taxes. To pay these taxes would not benefit the collector, nor the municipalities levying the taxes. It would simply result in taking the assets of the estate from the general creditors and transferring them to the secured creditors. The referee disallowed the claim and ordered the trustee not to pay the taxes. The mortgagee appealed, and the judge of this district has affirmed the decision of the referee.

The case was In re Robert Veitch & Son, not yet reported.

Perhaps a convenient mode of reviewing the general scope of the bankrupt law would be to consider the recommendations of the National Association of Referees in Bankruptcy for its amendment.

The report of their executive committee was rendered in March. There had previously been a general convention of referees, and a very thorough discussion of the different features of the law. The referees recommended, among other things, an increase in the number of reasons for refusing a discharge, and in the list of debts not affected by a discharge, an increase in the compensation of the trustees, that corporations be allowed to file voluntary petitions in bankruptcy, the shortening of the time within which the proceedings for an adjudication in voluntary bankruptcy may be brought to a close; the requiring the wife of a bankrupt to testify in regard to his affairs; that exempt property shall not be considered in determining the question of solvency of the respondent in a bankruptcy proceed-

ing; that taxes which are a lien on a homestead claimed to be exempt shall be paid by the trustee; that petitions for discharge shall not be filed until two months after the adjudication; that liability for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, shall not be affected by a discharge; that the appointment of a receiver or trustee of a corporation on the ground of insolvency shall be an act of bankruptcy; that the bankrupt's wife may be compelled to appear and testify.

These amendments will all be improvements in the law, and when they are passed, and the questions of jurisdiction between the United States Courts and the State Courts clearly settled, the benefits of the act will be greatly increased.

The proceeding in a case of voluntary bankruptcy is briefly as follows: The attorney for the bankrupt obtains three sets of blanks for the petition and schedules, of which the price is about one dollar. These blanks are very voluminous, but perhaps necessary. They are filed with the clerk of court. The clerk sends two of them to the referee in the county in which the bankrupt resides. The referee sends notice to the creditors of the time of first meeting. If the bankrupt has been through the probate court and has no assets, the referee in this district stamps his notices, "schedules show no assets;" no one appears at the meeting; the referee orders that no trustee be appointed; thirty days after adjudication the attorney for the bankrupt files with the court his petition for discharge; the referee sends notice of time and place of appearance to oppose the discharge. In some districts notice by creditors of the appearance to oppose is filed with the clerk of court, and, in some, with the referee; in this district, with the referee. The bankrupt is present at the time of hearing to be examined. If, after examination, any creditor desires to oppose, he files specifications of his reasons; the bankrupt files answer to this, and the referee hears the evidence and reports the facts to the judge with recommendation. If either party is dissatisfied with the finding of fact, he can have the evidence on that point certified up with the report; or, if either party thinks the recommendation is not warranted by the facts, he can have the issues of law reviewed by the judge, and the judge, in the end, decides the question of the discharge.

If there are assets, the creditors at the first meeting appoint a trustee, provided a majority in number and value agree, otherwise, the trustee is appointed by the referee. An appointment by the creditors is subject to approval by the referee, and if he finds a

reasonable ground for objection, he can refuse to approve it. Appeal can be had from his decision to the judge, but in fact such appeals are seldom made.

Dividends are supposed to be declared as often as there is five per cent. on hand. Ordinarily but one dividend is declared, and that at the final meeting.

Sales are at auction unless otherwise ordered by the referee. Orders for private sale may be made after a ten days' notice to creditors, and hearing thereon. Perishable property may be ordered by the referee to be sold without notice. This provision of the law has been very liberally construed, and it is practically held to mean that where the estate is subject to loss by keeping the property, a sale without notice will be ordered; thus *salt* has been held to be perishable.

At the final meeting, all unfinished matters are passed upon and final dividend declared. The time required for settlement runs anywhere from two months to two years. Claims for dividend may be presented at any time before declaration of the last dividend, provided that comes within a year.

Under the United States bankruptcy law, probably a much larger share of the assets go to the creditors than under assignments under State insolvency laws, because the amount absorbed by fees and expenses is very much smaller. Such laws have never been popular in this country, however, and have met with opposition from the officers who would otherwise receive fees.

The bankruptcy act has undoubtedly diminished the business of sheriffs and constables, as well as that of lawyers. Suits are not as likely to be brought when it is known that the bankrupt can obtain a discharge; and generally compromises without bankruptcy are much more easily effected.

Under the present scale of fees, no officers under the bankruptcy law are interested in retaining it, and after it has been in operation for a few years, and most of the insolvents in the country have obtained their discharge, it will doubtless be repealed, as in former cases.

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